

of service and compensation for a period of five calendar years after the due date of the report.

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[49 FR 46731, Nov. 28, 1984, as amended at 52 FR 11016, Apr. 6, 1987]

## PART 211—CREDITABLE RAILROAD COMPENSATION

Sec.

- 211.1 General.
- 211.2 Definition of compensation.
- 211.3 Compensation paid for time lost.
- 211.4 Vacation pay.
- 211.5 Employee representative compensation.
- 211.6 Compensation based on waiver or refund of organization dues.
- 211.7 Compensation credited for creditable military service.
- 211.8 Displacement allowance.
- 211.9 Dismissal allowance.
- 211.10 Separation allowance or severance pay.
- 211.11 Miscellaneous pay.
- 211.12 Compensation credited for title VII benefits.
- 211.13 Payments made after death.
- 211.14 Maximum creditable compensation.
- 211.15 Verification of compensation claimed.
- 211.16 Finality of records of compensation.

AUTHORITY: 45 U.S.C. 231f.

SOURCE: 49 FR 46732, Nov. 28, 1984, unless otherwise noted.

### § 211.1 General.

Benefits under the Railroad Retirement Act are based in part on the individual's years of service and amount of compensation credited to the individual under the Act. This part defines what the term compensation means and sets forth the criteria applied in determining what payments are creditable as compensation under the Railroad Retirement Act.

### § 211.2 Definition of compensation.

(a) The term compensation means any form of payment made to an individual for services rendered as an employee for an employer; services performed as an employee representative; and any separation or subsistence allowance paid under any benefit schedule provided in conformance with title

VII of the Regional Rail Reorganization Act of 1973 and any termination allowance paid under section 702 of that Act. Compensation may be paid as money, a commodity, a service or a privilege. However, if an employee is to be paid in any form other than money, the employer and employee must agree before the service is performed upon the following:

(1) The value of the commodity, service or privilege; and

(2) That the amount agreed upon to be paid may be paid in the form of the commodity, service or privilege.

(b) Compensation includes, but is not limited to, the following:

(1) Salary, wages and bonuses;

(2) Pay for time lost as an employee;

(3) Cash tips of \$20 or more received in a calendar month;

(4) Vacation pay;

(5) Military pay as determined in § 211.7 of this part;

(6) Displacement allowances as provided for in § 211.8 of this part;

(7) Dismissal allowances as provided for in § 211.9 of this part;

(8) Separation allowances as provided for in § 211.10 of this part;

(9) Miscellaneous pay as provided for in § 211.11 of this part;

(10) Payments made under title VII of the Regional Rail Reorganization Act of 1973 as provided for in § 211.12 of this part.

(11) Payments paid to an employee or employee representative which are subject to tax under section 3201(a) or 3211(a) of the Internal Revenue Code of 1954 are creditable as compensation under the Railroad Retirement Act for purposes of computation of benefits under sections 3(a)(1), 3(f)(3), 4(a)(1) and 4(f)(1).

(12) Voluntary payments of any tax by an employer, without deducting such tax from the employee's salary.

(13) Payments made by an employer with respect to a deceased employee except as provided for in § 211.13 of this part.

(c) Compensation does not include:

(1) Tips, except as provided in paragraph (b)(3) of this section;

(2) Payments for services performed by a nonresident alien for the period the individual is temporarily present in the United States as a nonimmigrant

## Railroad Retirement Board

## §211.4

under subparagraph (F) or (J) of section 1101(a)(15) of title 8, U.S.C. and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be;

(3) Remuneration paid in certain cases, as described below, for services performed for a local lodge or division of a railway labor organization.

(i) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after 1936 and prior to April 1, 1940, shall not be creditable as compensation in a month unless taxes with respect to such remuneration were paid under the Railroad Retirement Tax Act prior to July 1, 1940.

(ii) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after March 31, 1940, and prior to January 1, 1975, shall not be creditable as compensation in a month if the amount of such remuneration earned in the month is less than \$3.00.

(iii) Remuneration for services rendered for a local lodge or division of a railway labor organization which was earned after December 31, 1974, shall not be creditable as compensation in a month if the amount of such remuneration earned in the month is less than \$25.00.

(4) Payments for service as a delegate to a national or international convention of a railway-labor-organization employer if the individual rendering the service has not previously rendered service, other than as a delegate, which may be included in the individual's years of service;

(5) Except as provided in §211.2(b)(11), the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer which makes provisions for employees generally (or for employees generally and their dependents), or for a class or classes of employees (or for a class or classes of employees and their dependents), on account of sickness or accident disability, or medical, or hospitalization expenses in connection

with sickness or accident disability; and

(6) Any amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred, or reasonably expected to be incurred in the business of the employer, provided the payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment.

[49 FR 46732, Nov. 28, 1984, as amended at 53 FR 17184, May 16, 1988; 58 FR 45251, Aug. 27, 1993]

### §211.3 Compensation paid for time lost.

(a) A payment made to an employee for a period during which the employee was absent from the active service of the employer is considered to be pay for time lost and is, therefore, creditable compensation. Pay for time lost as an employee includes:

(1) Pay received for a certain period of time due to personal injury, or

(2) Pay received for loss of earnings for a certain period of time, resulting from the employee being placed in a position or occupation paying less money. In reporting compensation which represents pay for time lost, employers shall allocate the amount paid to the employee to the month(s) in which the time was actually lost. The entire amount of any payment made to an employee for personal injury is considered pay for time lost unless, at the time of payment, the employer states that a particular amount of the payment was for reasons other than pay for time lost.

(b) Where pay for time lost is allocated to the month(s) in which the time was actually lost, the Board will accept the allocation made by the parties involved if it relates to the employee's normal monthly pay. A reasonable relationship to an employee's normal monthly pay is ordinarily no less than ten times the employee's daily pay rate.

### §211.4 Vacation pay.

Payments made to an employee with respect to vacation or holidays shall be

## **§211.5**

considered creditable compensation whether or not the employee takes the vacation or holiday.

[58 FR 45251, Aug. 27, 1993]

### **§211.5 Employee representative compensation.**

All payments made by a railway labor organization to an individual who is an employee representative as a result of the position or office he occupies with such organization are creditable as compensation, including payments made for services not connected with the representation of employees, except that payments in excess of the annual maximum amount will not be credited.

[53 FR 17184, May 16, 1988]

### **§211.6 Compensation based on waiver or refund of organization dues.**

A waiver or refund or organization dues which was based solely on consideration for membership in the organization is considered creditable compensation if there is proof that the waiver or refund was intended to be, and was accepted as, a dismissal of an obligation of the organization to compensate the employee for services rendered.

[53 FR 17184, May 16, 1988]

### **§211.7 Compensation credited for creditable military service.**

In determining the creditable compensation of an employee, the following amounts shall be credited for each month of military service, provided the employee's combined monthly railroad and military compensation does not exceed the maximum creditable amount:

(a) \$160 for each calendar month before 1968;

(b) \$260 for each calendar month after 1967 and before 1975;

(c) For years after 1974, the actual military earnings reported as wages under the Social Security Act.

[53 FR 17184, May 16, 1988]

### **§211.8 Displacement allowance.**

An allowance paid to an employee because he has been displaced to a lower

## **20 CFR Ch. II (4-1-10 Edition)**

paying position is creditable compensation.

[58 FR 45251, Aug. 27, 1993]

### **§211.9 Dismissal allowance.**

Dismissal allowances paid to an employee under a protective labor agreement that covers the amounts paid for specific periods of time are creditable as compensation under the Railroad Retirement Act, provided the employee has not severed his or her employee-employer relationship.

[53 FR 17184, May 16, 1988, as amended at 58 FR 45251, Aug. 27, 1993]

### **§211.10 Separation allowance or severance pay.**

Separation or severance payments are creditable compensation except that no part of such payment shall be considered creditable compensation to any period after the employee has severed his or her employer-employee relationship except as provided for in §211.11 of this part.

[58 FR 45251, Aug. 27, 1993]

### **§211.11 Miscellaneous pay.**

Any payment made to an employee by an employer which is excluded from compensation under the Railroad Retirement Act, but which is subject to taxes under the Railroad Retirement Tax Act, shall be considered compensation for purposes of this part but only for the limited purpose of computing the portion of the annuity computed under section 3(a), 4(a), or 4(f) of the Railroad Retirement Act (commonly called the tier I component).

[58 FR 45251, Aug. 27, 1993]

### **§211.12 Compensation credited for title VII benefits.**

Payments made to an employee under title VII of the Regional Rail Reorganization Act of 1973 are creditable as compensation only for the month in which the employee first filed an application for benefits under that Act. The compensation to be credited cannot exceed the monthly creditable amounts defined in §211.13(a) of this part for compensation earned prior to 1985 or the annual creditable amount defined

## Railroad Retirement Board

## §211.16

in §211.13(b) of this part for compensation earned after 1984.

[53 FR 17185, May 16, 1988]

### §211.13 Payments made after death.

Payments made by an employer with respect to a deceased employee but paid after the calendar year of the employee's death to the employee's survivors or estate are not creditable compensation.

[58 FR 45251, Aug. 27, 1993]

### §211.14 Maximum creditable compensation.

Maximum creditable compensation for calendar years after 1984 is the maximum annual taxable wage base defined in section 3231(e)(2)(B) of the Internal Revenue Code of 1986. In November of each calendar year the Director of Research and Employment Accounts shall notify each employer of the amount of maximum creditable compensation applicable to the following calendar year.

[58 FR 45251, Aug. 27, 1993]

### §211.15 Verification of compensation claimed.

Compensation claimed by an employee, which is not credited in the records of the Board, must be verified to the satisfaction of the Board before it may be credited. An employee's claim to compensation not credited shall be processed as follows:

(a) If the compensation claimed is in excess of the maximum creditable amounts defined in §211.13 of this part, the Director of the Bureau of Research and Employment Accounts shall inform the employee that the compensation claimed is not creditable.

(b) If the compensation is claimed within four years from the date the compensation was required to be reported to the Board as prescribed in §209.6 of this chapter, the Director of Research and Employment Accounts shall contact the employer requesting a review of their records, and if the employee's claim is correct, the employer will submit an adjustment crediting the employee with the compensation claimed. If the employer states that the employee's claim is incorrect, the employee will be requested to submit

check stubs to show railroad retirement taxes withheld from the compensation claimed. Upon receipt of the check stubs, the proof will be sent to the employer along with a request for the employer to submit an adjustment crediting the employee with the compensation claimed.

[49 FR 46732, Nov. 28, 1984, as amended at 53 FR 17185, May 16, 1988. Redesignated at 58 FR 45251, Aug. 27, 1993]

### §211.16 Finality of records of compensation.

(a) *Time limit for corrections to records of compensation.* The Board's record of the compensation reported as paid to an employee for a given period shall be conclusive as to amount, or if no compensation was reported for such period, then as to the employee's having received no compensation for such period, unless the error in the amount of compensation or the failure to make return of the compensation is called to the attention of the Board within four years after the date on which the compensation was required to be reported to the Board as provided for in §209.6 of this chapter.

(b) *Correction after 4 years.* (1) The Board may correct a report of compensation after the time limit set forth in paragraph (a) of this section where the compensation was posted or not posted as the result of fraud on the part of the employer.

(2) Subject to paragraph (c) of this section, the Board may correct a report of compensation after the time limit set forth in paragraph (a) of this section for one of the following reasons:

(i) Where the compensation was posted for the wrong person or the wrong period;

(ii) Where the earnings were erroneously reported to the Social Security Administration in the good faith belief by the employer or employee that such earnings were not covered under the Railroad Retirement Act and there is a final decision of the Board under part 259 of this chapter that such employer or employee was covered under the Railroad Retirement Act during the period in which the earnings were paid;

(iii) Where a determination pertaining to the coverage under the Railroad Retirement Act of an individual,

partnership, or company as an employer, is retroactive; or

(iv) Where a record of compensation could not otherwise be corrected under this part and where in the judgment of the three-member Board that heads the Railroad Retirement Board failure to make a correction would be inequitable.

(c) *Limitation on crediting service.* (1) Except as provided in paragraph (b)(1) of this section, no employee may be credited with service months or tier II compensation beyond the four year period referred to in paragraph (a) of this section unless the employee establishes to the satisfaction of the Board that all employment taxes imposed by sections 3201, 3211, and 3221 of title 26 of the Internal Revenue Code have been paid with respect to the compensation and service.

(2) The limitation on the creditability of service months and tier II compensation in paragraph (c)(1) of this section shall not affect the creditability, for purposes of computing the tier I component of a railroad retirement annuity, of compensation payments with respect to which taxes have been paid under either the Railroad Retirement Tax Act or the Federal Insurance Contributions Act.

[62 FR 3790, Jan. 27, 1997]

## PART 212—MILITARY SERVICE

Sec.

212.1 General.

212.2 Military service defined.

212.3 Crediting of military service.

212.4 Periods of creditable military service.

212.5 Verification of military service.

212.6 Board's determination for use of military service.

AUTHORITY: 45 U.S.C. 231f.

SOURCE: 49 FR 46734, Nov. 28, 1984, unless otherwise noted.

### § 212.1 General.

In determining an individual's entitlement and amount of benefits under the Railroad Retirement Act, an individual's military service creditable under the Railroad Retirement Act is used. This part defines military service as used under this Act and sets forth the criteria to determine the creditability of military service.

### § 212.2 Military service defined.

Military service is the performance of active service by an individual in the armed forces of the United States. An individual is considered to be in active military service when commissioned or enrolled in the land, naval or air forces of the United States until resignation or discharge therefrom. The service of an individual in any reserve component of the land, naval or air forces of the United States, during any period in which ordered to active duty, even though less than thirty days, is also considered active service. However, service in the Army Specialist Corps and the Merchant Marine is not creditable under the Railroad Retirement Act.

### § 212.3 Crediting of military service.

In determining an individual's entitlement to an annuity and the amount of annuity to be paid under the Railroad Retirement Act, a calendar month or part of a calendar month during which the individual was in the active military service of the United States in a war service period, or period of national emergency, as determined in § 212.4 of this part, may be included in the individual's years of service. Military service is credited as though the individual had performed service for a railroad employer as provided for in part 210 of this chapter, provided that the individual is credited with railroad service in the year of or the year before entrance into active military service. Compensation for creditable military service shall be credited as provided for in § 211.7 of this chapter.

### § 212.4 Periods of creditable military service.

In order for military service to be considered to be creditable under the Railroad Retirement Act, it must have been performed during one of the following periods:

(a) April 21, 1898, through August 13, 1898—Spanish American War;

(b) February 4, 1899, through April 27, 1902—Philippine Insurrection;

(c) May 9, 1916, through February 5, 1917—Mexican Border Disturbances;

(d) April 6, 1917, through November 11, 1918—World War I;